

REMARKS

Claims 14-21, 30-36 and 38-39 are currently pending. Claims 1-7, 22-29, and 37 have been withdrawn from consideration and claims 8-13 and 40-43 have been cancelled.

Applicants acknowledge and appreciate the time spent by the Examiner and the Examiner's Supervisor, Mr. Allan Shoap, during the telephone interview of May 13, 2005. Applicants appreciate Mr. Shoap's agreement to reconsider our arguments.

Discussion of Prosecution History to Date

The present application, including original claims 1-43 was filed on September 23, 2003. The application is a continuation of U.S. Application No. 09/898,398 filed June 29, 2001. On April 26, 2004 Applicants received a restriction requirement (hereinafter "the first restriction"). The first restriction identified three distinct species in which Species I was shown in Figs. 1-9, Species II was shown in Fig. 10, and Species III was illustrated in Figs. 11-14.

Applicants filed an election ("the first election") that responded to the first restriction requirement by electing Species I as shown in Figs. 1-9. Applicants stated that claims 1-43 read on the Species illustrated in Figs. 1-9 and as such, no claims were withdrawn or cancelled. In addition, Applicants noted that many of the claims read on two or more of the species.

The Examiner issued a substantive Office action on July 2, 2004. The action withdrew claims 1-7, 14-29, and 37 from consideration and rejected or objected to the remaining claims. Applicants responded to the Office action on October 1, 2004 with arguments noting that the

withdrawal of claims 1-7, 14-29, and 37 was improper. In addition, Applicants amended some of the rejected claims and presented arguments relating to the substantive rejections.

The Examiner then issued another Restriction (hereinafter “the second restriction”) in which six inventions and six different species were identified. **The Office action summary stated that the second restriction was responsive to the October 1, 2004 amendment. However, the Disposition of Claims listed claims 1-43 as pending and none of the claims as being withdrawn. Applicants responded to the second restriction with an election (“the second election”) in which claims 14-21 as shown in Figs. 11-14 (Species E) were elected. Applicants also noted in the Remarks section of the second election that it was unclear if the October 1, 2004 response was entered or even considered.**

Argument

In response to the Examiner’s withdrawal of claims 1-7, 14-29, and 37 in the July 2, 2004 Office action, the Applicants submitted the following arguments. Applicants represent and resubmit the arguments in full.

The Examiner has withdrawn claims 1-7, 14-29, and 37 from consideration believing they are drawn to a non-elected species. In the restriction mailed April 26, 2004, the Examiner noted three species, but never provided a description of the supposed differences or a suggestion as to which claims read on which species. Thus, it was left to Applicants to make this determination. While Applicants acknowledge and agree that there are three species illustrated in the figures, Applicants do not concede that all the species do not include a four-bar linkage. In fact, Applicants stated in the response to the restriction dated May 26, 2004 that “several of claims 1-

43 are readable on two or more species identified by the Examiner.” In addition, Applicants believe the species of Figs. 1-9, as well as the species of Figs. 11-14 include a four-bar linkage as that term would be understood by one of ordinary skill in the art.

The Examiner now states that the Applicants are incorrect in their determination of claims that read on the species of Figs. 1-9, and that Applicants made the election without traverse. This process denies the Applicants the opportunity to traverse the restriction of the claims, as the actual restriction is being presented after Applicants made the election. Had Applicants been presented with the Examiner’s opinion at the time the Election was made, the Election would have been made with traverse.

The Examiner argues that the discussion of a four-bar linkage in relation to the species that includes Fig. 13 necessarily implies that the remaining species cannot contain a four-bar linkage. Based on this argument, the Examiner contends that any claim that includes the limitation of “a four-bar linkage” cannot read on the species of Figs. 1-9. This interpretation denies the reality that the species of Figs. 1-9 actually does include a four-bar linkage as that term would be understood by one of ordinary skill. The fact that Applicants chose not to explicitly describe the complete linkage of Figs. 1-9 as a four-bar linkage does not change the fact that the linkage is a four-bar linkage.

In support of Applicants’ contention that all of the species include a four-bar linkage, the Examiner is directed to the Declaration of Balaji Kandasami enclosed herewith. As stated by Mr. Kandasami, the term “four-bar linkage” is a term of art in

mechanical engineering that would be clearly understood by one of ordinary skill in the art. A four-bar linkage is a mechanical linkage that includes a first link that rotates about a first axis, a second link that rotates about a second axis, a third link that interconnects the axes, and a fourth link that pivotally interconnects the free ends of the first and second links. A linkage that matches this description is clearly illustrated in Fig. 2 of the present application. A marked-up version of Fig. 2 is included with the Declaration of Mr. Kandasami to better illustrate the four-bar linkage. Thus, one of ordinary skill in the art would recognize that the construction of Figs. 1-9 includes a four-bar linkage. Furthermore, the description of the linkage included in the construction of Figs. 1-9 as a four-bar linkage would be unnecessary, as one of ordinary skill in the art would immediately recognize the linkage as a four-bar linkage. Thus, one of ordinary skill in the art, when reading claims 1-7, 14-29, and 37 would agree that the claims that include a four-bar linkage would read on the species illustrated in Figs. 1-9. Furthermore, one of ordinary skill in the art would not interpret the discussion of a four-bar linkage in relation to Fig. 13 as limiting the remaining figures or implying the remaining figures do not show a four-bar linkage.

Thus, the proper analysis is to compare the limitations of the claims to the figures of the elected species to determine if the limitations of the claim are present in the species. It is not proper to limit the claims that read on one species based on the description of another species. In this case, it is clear that a four-bar linkage is present in the species of Figs. 1-9. As such, a claim that recites a four-bar linkage is not necessarily precluded from reading on the elected species of Figs. 1-9.

Following the presentation of the foregoing arguments, the Examiner issued the second restriction. As discussed, the second restriction listed claims 1-43 as pending and did not list any withdrawn claims. In addition, the restriction included separate inventions for each claim set and asked that Applicants choose one of the inventions for continued prosecution. Applicants noted in the second election that it was not clear which claims were pending and which claims were withdrawn. However, the fact that the Examiner presented previously withdrawn claims 1-7 as Invention I, claims 14-21 as invention III, claims 22-29 as Invention IV, and claim 37 as part of Invention V was a strong indication to the Applicants that these claims must be available for election. All of these groups were listed under the statement “[r]estriction to one of the following inventions is required under 35 U.S.C. 121.” Thus, Applicants believed the Arguments presented in the Response dated October 1, 2004 had been successful and that the Examiner issued the second restriction as a replacement for the first restriction, rather than a further restriction of the claims.

In response to the second restriction, Applicants elected the Group III claims (claims 14-21) as shown in Figs. 11-14 (Species E). While Applicants believe the claims of Group III read on Species A, B, and F, as well as Species E, Applicants chose to elect Species E because it was clear from the Office action that the Examiner agrees that Figs. 11-14 include a four-bar linkage. Applicants do not concede that Figs. 1-10 do not illustrate a four-bar linkage. Rather, Applicants took what appeared to be the more expedient course, believing the first restriction and the improper withdrawal of claims 1-7, 14-29, and 37 had been overcome.

CONCLUSION

In light of the foregoing, Applicants respectfully request substantive Examination of claims 14-21. Should the Examiner disagree with Applicants arguments, Applicants elect to continue prosecution of the Claims of Group V including claims 30-36 and 38-39 and Species A as illustrated in Figs. 1-9.

The undersigned is available for telephone consultation during normal business hours.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'TH J OTTERLEE', written in a cursive style.

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